

Neutral Citation Number: [2009] EWHC 1390 (Admin)

Case No: CO/2173/2006

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/06/2009

Before :

MR. STEPHEN MORRIS QC
Sitting as a Deputy High Court Judge

Between :

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|---|-------------------------|
| THE QUEEN ON THE APPLICATION OF SAAD TARIQ aka TARIQ MEHMOOD | <u>Claimant</u> |
| - and - | |
| THE SECRETARY OF STATE FOR THE HOME DEPARTMENT | <u>Defendant</u> |

(Transcript of the Handed Down Judgment of
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Official Shorthand Writers to the Court)

David Lemer (instructed by **Thompson & Co**) for the **Claimant**
Sarabjit Singh (instructed by **Treasury Solicitor**) for the **Defendant**

Hearing dates: 23 March 2009

Judgment

Mr Stephen Morris QC :

Introduction

1. The Claimant, Saad Tariq (also known as Tariq Mehmood), seeks judicial review of the refusal of the Defendant, the Secretary of State for the Home Department, to treat his further representations as a fresh asylum claim under paragraph 353 of the Immigration Rules. As matters have developed, the relevant refusal is contained in a letter from the Defendant dated 27 November 2008. The Claimant seeks a declaration that his representations dated 4 August 2008 represent a fresh claim and should be dealt with on that basis.
2. The issue is whether the Defendant's decision to refuse to treat the Claimant's representations as a fresh claim was unreasonable.

Factual Background

3. The Claimant is a citizen of Pakistan, now aged 35. He arrived in the United Kingdom on 20 September 1998 and claimed asylum on 29 September 1998, on the basis of persecution by reason of his Ahmadi faith. His claim was refused in a letter dated 22 September 2000. He appealed to an adjudicator, who dismissed his appeal in a determination promulgated on 23 April 2001. A human rights claim was refused on 7 December 2001. He appealed successfully to the Immigration Appeal Tribunal, which on 3 December 2003, remitted the case for de novo hearing. The appeal was then dismissed by a different adjudicator in a determination promulgated on 2 February 2004 ("the Adjudicator's Determination"). Permission to appeal to the IAT was refused on 27 April 2004.
4. Between 30 June 2004 and 23 February 2006, the Claimant made further representations on asylum and human rights grounds. These representations were ultimately refused by a letter dated 10 March 2006, the Claimant having been detained pending removal on 23 February 2006.
5. The application for judicial review was made on 13 March 2006. James Goudie QC, by order dated 1 June 2006, refused permission on the papers. By consent order dated 30 October 2006, the renewed permission application was adjourned, pending the determination by the Asylum and Immigration Tribunal ("AIT") of pending Country Guidance cases concerning issues relating to those of the Ahmadi faith in Pakistan.

6. On 17 October 2007 the AIT promulgated its determination in the Country Guidance case of *IA and others CG (Ahmadis: Rabwah) Pakistan CG* [2007] UKAIT 00088. On 4 April 2008, the AIT promulgated its determination in the further case of *MJ and ZM (Ahmadis-risk)(Pakistan)* [2008] UKAIT 00033; and on 22 May 2008 the Court of Appeal gave judgment in the appeal in the *IA* case: *SSHD v. IA (Pakistan)* [2008] EWCA Civ 580.
7. At the renewed oral hearing in the present case on 21 July 2008, Walker J granted permission, subject to certain conditions providing for the making of further submissions. The Claimant made further representations by letter dated 4 August 2008, and received on 8 September 2008 ("the Further Representations"). By its decision letter of 27 November 2008 ("the Decision"), the Defendant refused to treat these further representations as amounting to a fresh claim. On 9 December 2008, the Claimant filed Amended Grounds of Claim for judicial review and on 25 February 2009 the Defendant filed Detailed Grounds of Defence.
8. The Adjudicator's Determination and the Decision are considered in more detail below. Before doing so, I set out the relevant legal principles applicable to the Claimant's case.

Relevant legal principles

Fresh claims and judicial review

9. Paragraph 353 of the Immigration Rules sets out the correct approach to material presented by way of further submissions after the dismissal of an asylum claim where there is no extant appeal. It is in the following terms:

"When a human rights or asylum claim has been refused and any appeal relating to that claim is no longer pending, the decision maker will consider any further submissions and, if rejected, will then determine whether they amount to a fresh claim. The submissions will amount to a fresh claim if they are significantly different from the material that has previously been considered. The submissions will only be significantly different if the content:

(i) had not already been considered; and

(ii) taken together with the previously considered material, created a realistic prospect of success, notwithstanding its rejection.

This paragraph does not apply to claims made overseas."

10. The approach to be adopted, by the Secretary of State and by this Court respectively, when dealing with an application under paragraph 353 is set out in the judgment of Buxton LJ in *R (on the application of WM DRC) v Secretary of State for the Home Department* [2006]

EWCA Civ 1495, at §§6 to 11. *The Secretary of State* has to consider whether there is new material which is significantly different from that already submitted, and if so, whether that material, when taken together with the previous material, creates a realistic prospect of success in a further claim. In so doing, the Secretary of State must be informed by anxious scrutiny of the material.

11. As to the approach to be adopted by *the Court* when itself reviewing a decision of the Secretary of State taken pursuant to paragraph 353, the first issue for the Court is whether the Secretary of State asked herself the right question, namely whether there is a realistic prospect of success before an immigration judge. The second issue for the Court is whether the Secretary of State has applied the requirement of anxious scrutiny. Finally, the question for the Court is whether the Secretary of State's conclusion of "no realistic prospect" is *Wednesbury* unreasonable; it will be unreasonable, in particular, if the conclusion was not reached on the basis of anxious scrutiny. Most recently, in *ZT (Kosovo) v. SSHD* [2009] UKHL 6 [2009] 1 WLR 348 the House of Lords confirmed this as the correct approach for the Court. At the same time, the majority of their Lordships recognised that, where there are no issues of primary fact, the Court's own view as to whether there is a realistic prospect before the immigration judge is likely to inform its view as to whether the Secretary of State's conclusion was *Wednesbury* unreasonable and that, in such a case, if the Court itself concludes that a claim has a realistic prospect of success, it will quash the Secretary of State's contrary view as being irrational: see opinions at §§ 21 to 23, 75 to 76 and 83.
12. The issue before me therefore is whether, applying the requirement of anxious scrutiny, the decision of the Defendant that, considering the Claimant's personal circumstances in the light of *IA* and *MJ and ZM*, there is no realistic prospect of the Claimant establishing, before an immigration judge, that there is a real risk of persecution or ill-treatment upon return to Pakistan was unreasonable and whether in reaching that conclusion the Defendant satisfied the requirement of anxious scrutiny.
13. The Claimant also seeks to rely upon the principle now enshrined in the Immigration Rules as paragraph 339K:

"339K. The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated"

The principles to be applied to Pakistan Ahmadi cases

14. The two recent Country Guidance cases of *IA* and *MJ and ZM* consider the approach to be adopted to asylum and human rights claims concerned with the risk on return to Pakistan of those of the Ahmadi faith. *IA* addresses specifically the issue of risk in Rabwah, whilst *MJ and ZM* addresses the position of Ahmadis in Pakistan more generally. I deal with the relevant judgments in chronological order.

(1) IA and Others in the AIT

15. In *IA*, the AIT held, contrary to earlier case law, that Rabwah does not necessarily constitute a safe haven for every Ahmadi and should not necessarily be treated as an appropriate place for relocation within Pakistan. The headnote to the AIT's determination states as follows:

“Contrary to what is said in KM (Pakistan) [2004] UKAIT 00302, MM (Pakistan) CG [2002] UKIAT 05714, KK (Pakistan) [2005] UKIAT 00033, MC (Pakistan) [2004] UKIAT 00139, and AZ (Pakistan) CG [2002] UKIAT 02642, Rabwah does not constitute a safe haven for any Ahmadi at risk of persecution elsewhere in Pakistan and should not, without more, be treated as an appropriate place of internal relocation.”

16. Relevant parts of the AIT's decision are as follows:

“3. The existence of what has been described as an Ahmadi stronghold, as indeed it is when seen from the point of view of the demographic structure, has seemed on a number of occasions to the Tribunal to give a reason for supposing that an Ahmadi who in Pakistan needed to seek refuge, that is to say, an Ahmadi who had a well-founded fear of persecution in his home area, could be expected to obtain refuge in Rabwah rather than seeking the surrogate protection of the international community. Thus, it has become the practice, and it is the guidance that an Ahmadi needing to seek refuge should be regarded generally as able to find such refuge in Rabwah. Rabwah is, according to the existing guidance, a proper place of internal relocation, sufficient to defeat an asylum claim.

4. Ahmadis in Pakistan are subject to more than occasional outbursts of persecution from Sunnis particularly acting under the auspices of the body called the Khatme Nabuwat (KN). That is a neo-fundamentalist organisation which has the aim of the extinction of Ahmadiyya: not, it must be emphasised, the extinction of Ahmadis, although its activities are sometimes violent. Its purpose is to bring an end to the religion by converting its followers to Sunni Islam. But it is the activities of that organisation, the KN, which form the basis of many claims of persecution by Ahmadis. The organisation has branches throughout Pakistan and in particular throughout Punjab province and, specifically, there is a strong branch in Rabwah because, although ninety-five per cent or more of the population are Ahmadis, there is a minority who are not Ahmadis and Rabwah is the place where Ahmadis can evidently be found if there should be anybody who seeks to take action against them.

5. *The evidence is that, because of the proscription of Ahmadiyya, there is little opportunity for those who are prosecuted (under the auspices of the KN or otherwise) to make a proper defence or to invoke effectively the protection of the courts. There is evidence relating to cases almost indefinitely adjourned from month to month or from year to year. There is evidence also that those who might be available as witnesses are unwilling to come forward.*

6. *Thus the position has sometimes been, in Ahmadi cases, that a person has claimed to be a follower of the religion; has been therefore assumed for the reason that we have already indicated to be a person who will attempt to convert others; has been at risk from activities of the KN; even if his conduct was clearly not illegal he has been at risk of unmerited prosecution against which defence would be difficult; there has been the further risk of illegal or violent activity by the KN. He has been able in some cases to establish a well-founded fear therefore of persecution in his home area; but the guidance has been that he can safely and appropriately relocate to Rabwah.*

...

18. *From the evidence we derive the following facts about Rabwah, some of which we have already referred to. Rabwah is a relatively small town and has a defined area. It has a population of something under 50,000 of whom the vast majority are Ahmadis. There are between 2,000,000 and 5,000,000 Ahmadis in Pakistan in all probability. Thus, although Ahmadis are a majority in Rabwah, the Rabwah Ahmadis are a tiny minority of the Ahmadis in Pakistan. Ahmadis however have, for a reason which has not been explained to us but the fact is not disputed, a disinclination to engage in government. They are required to register in a separate electoral roll. That, we understand, is a feature which they do not share with other Pakistani religious minorities. Whether as a result of that or not, Ahmadis as a group do not register for elections: it is that which makes it so difficult to estimate their numbers, but it is also that which has the effect that although in Rabwah they are the vast majority of the inhabitants, they are not represented in government as one might expect. In fact the evidence shows that Ahmadis are not in government in Rabwah, as they are not in government anywhere else in Pakistan.*

19. *In Rabwah there is a strong branch of the KN; there are large KN rallies several times a year and other activities. Rabwah is known as an Ahmadi area and therefore may be the target of such activities. There is, however, as Mr Waite pointed out in his submissions, relatively little evidence of anti-Ahmadi trouble in Rabwah. That is the result, no doubt, of a number of factors. One may be, as Mr Waite suggested, that Rabwah is relatively safe and indeed "slightly safer or a little safer" was the evidence received by the Parliamentary Human Rights Commission. But of course the lack of activity against Ahmadis in Rabwah does not necessarily show that Rabwah is safe. It may only show that the amount of activity against Ahmadis is not very great anyway. The question for an individual is whether he is at risk, not whether everybody is at risk.*

...

21. *Nevertheless, Rabwah's status as an Ahmadi stronghold has given rise to the view expressed sometimes by the Secretary of State, particularly in letters of refusal, and sometimes by the Tribunal, whether in reliance on country guidance or otherwise, that a person at risk elsewhere and so in need of a place to which to relocate internally could reasonably be expected to go to Rabwah where he would obtain protection because of the Ahmadis there. We are satisfied that that is wrong. The*

situation for Ahmadis in Rabwah is capable of examination in a way that is perhaps not so easy elsewhere because of the numbers. To the extent also that there is a large Ahmadi population in Rabwah, there may be some safety in numbers and it may also be the case that a member of the KN, who is intent merely on pursuing the KN's agenda in a generalised fashion, is less likely to target any identified individual in Rabwah simply because there are so many Ahmadis there. That is a difference from a person who seeks to do the same thing in a small village where there are few Ahmadis, each of whom would therefore be at proportionately greater risk.

22. But although there is that safety in numbers, and there is a possibility of informal community support amongst Ahmadis, the advantages of Rabwah stop there, even for an Ahmadi who lives in Rabwah. Such a person cannot expect in Rabwah any more than anywhere else to obtain protection from the police (there are few or no Ahmadi policemen) or from other officials; because, despite being the majority population of Rabwah, Ahmadis are not represented in government. So there is no greater protection available for local Ahmadis in Rabwah than there is for Ahmadis anywhere else in Pakistan.

23. For those who move to Rabwah, from other parts of Pakistan, the prospects are, on the evidence we have seen, to be viewed with even less equanimity. Unless they have friends or relations in Rabwah they may not, according to the evidence, be able to obtain accommodation. There are regulations prohibiting the sale of land in one part of Rabwah to Ahmadis, although there is some evidence of Ahmadi building on vacant land in the other part of Rabwah and outside the town centre. Further, the very fact of having moved to Rabwah may attract attention to an individual's religious affiliation.

24. ... Rabwah is not a ghetto on the evidence that we have heard. It is, however, a place like any other place in Pakistan. That is to say it is a place where the government is Sunni and it has the additional difficulty that, if it is seen as a centre to which Ahmadis are attracted, it is at the same time a small place in which they may have some difficulty in acquiring accommodation.

25. It therefore seems to us that despite Rabwah's special profile in the Ahmadi religion it has no special status in the refugee related discourse relating to Pakistani Ahmadis. It is simply wrong to say in general that a person who has established a history of persecution or a fear of persecution as an Ahmadi in some other part of Pakistan can reasonably be expected to relocate to Rabwah. It may be that he can go to Rabwah for a short time. It may be that for that short time he will be safe. But, save in exceptional circumstances, for example if he has family or relatives in Rabwah, despite the majority of inhabitants there, he may not in fact be reasonably practicably able to live there and, if he does, he will be no safer than anywhere else: because the governmental, official structure and seat of power is the same as elsewhere in Pakistan and the fundamentalist anti-Ahmadi religious group, the KN, is as active there as anywhere else, if not more so.

26. That is not to say that every Pakistani Ahmadi is at risk of persecution and is a refugee. As Mr Waite pointed out, the evidence of serious harm to Ahmadis in Rabwah is relatively sparse. The point is, however, that the evidence does not suggest to us that Rabwah is safer than anywhere else. Mr Waite pointed to the fact that there is some evidence that, at any rate for short periods, Ahmadis from elsewhere seek some protection in Rabwah amongst the Ahmadi community there. That is a perfectly fair point, but it does not demonstrate that Rabwah is safe for long-term residence. The incidence of actual harm to Ahmadis is, on the evidence, not high in Rabwah,

and, on the evidence, is not high elsewhere in Pakistan. But that is not the point. The point is not whether every Ahmadi is at risk of persecution but whether some Ahmadis who are at risk of persecution can be expected to relocate to Rabwah.

27. *The Tribunal will look in due course at the other issues relating to Ahmadis. In the meantime, however, we draw attention to one comment in particular in the evidence given by the Human Rights Commission of Pakistan to the Parliamentary Human Rights Group and recorded at paragraph 4.1 of the latter document.*

"... the HRCP stated that safety in Rabwah depends on the nature of the persecution and/or the influence of the persecutor. For example, if a neighbour wishes to take over an Ahmadi's business by capitalising on anti-Ahmadi sentiment, then the job of the persecutor is complete once the Ahmadi has left the local community. However, should the persecutor be a person of influence or means, they may use this to follow their target to Rabwah as well."

There is therefore a difference between those who are targeted or pursued, in particular those in respect of whom there is some institutional pursuit on the one hand, and those who are merely the victims of local Sunnis who want to take advantage of restrictions on Ahmadis in order to secure some financial or other advantage for themselves.

28. It is wrong to assume that Rabwah, because of its majority Ahmadi population, is either accessible or safe for those who, on the evidence, need a place of safety. Each case will depend on its facts but in no wise can the existence of Rabwah be regarded generally as a reason for dismissing an appeal that would otherwise be allowed."

(emphasis added)

17. At §§29 and 30, the AIT went on to apply the principles to the facts of the three appellants. In particular, at §30, the AIT referred specifically to the risk from the KN in Rabwah.

(2) MJ and ZM

18. The determination in *MJ and ZM* is the latest AIT country guidance decision relating to the risks for Ahmadis in Pakistan. Unlike *IA*, it concerned the position of Ahmadis in general in Pakistan as a whole, rather than the specific position in Rabwah. The AIT's reasoning commences with the following summary:

"1. The finding in *IA and Others* (Ahmadis: Rabwah) Pakistan CG [2007] UKAIT 00088 that the existence of a majority Ahmadi community in Rabwah does not justify dismissing an appeal which would otherwise be allowed remains valid. Rabwah is no safer than elsewhere in Pakistan for Ahmadis, but the question whether it is an appropriate internal relocation option for an Ahmadi will always depend on the particular circumstances and facts of that individual's situation.

2. In Pakistan as a whole, whilst it is clear that from time to time local pressure is exerted to restrict the building of new Ahmadi mosques, schools and cemeteries, and that a very small number of Ahmadis are arrested and charged with blasphemy or behaviour offensive to Muslims, the number of problems recorded is small and has declined since the Musharraf Government took power. Set against the number of Ahmadis in Pakistan as a whole, they are very low indeed. The courts do grant bail and all appeals against blasphemy convictions in recent years have succeeded.

3. There is very sparse evidence indeed of harm to Ahmadis from non-state agents (though rather more anecdotal evidence of difficulties for Christians). The general risk today on return to Pakistan for Ahmadis who propagate the Ahmadi faith falls well below the level necessary to show a real risk of persecution, serious harm or ill-treatment and thus to engage any form of international protection.

4. Where, exceptionally, the facts of a particular appellant's case indicate that such an appellant cannot be returned safely to their home area, the existence of an internal relocation option, either to Rabwah or elsewhere in Pakistan, is a question of fact in each such appeal."

19. The facts relating to the two appellants in that case can be summarised as follows. The first appellant was a Pakistani national, an Ahmadi and from Sargodha, in Punjab. He settled in Sargodha, where he had a successful business and people came to know he was Ahmadi. He used to preach and on occasions was insulted and beaten. His employees were beaten and detained by police and released on payment of bribes. Traders and the Khatme Nabuwat ("the KN") issued a fatwa against him and his shop was forcibly closed by police. But later he resumed trading and nothing adverse occurred for three years. Then in 2003 KN mullahs attacked his family home; his sister's husband imprisoned two of his wife's brothers and threats to his life were made by an Islamic cleric. He relocated to Rabwah, where he tried to live but he suffered hardship and there was no protection for him as a convert. He left Rabwah quickly, but his wife and children remained there; his children attended an Ahmadi school. The second appellant was a Pakistani national, an Ahmadi from Jhelum in Punjab. He lived and worked in Karachi without problem for some time. In 2002, two KN mullahs attacked him, punching and kicking him. The police were not interested. He was then arrested and detained for seeking to convert and then released on payment of bribe. Later in Karimbad local mullahs again came looking for him to beat him up. He then moved back to Khewra, his ancestral village, where the police arrested him and detained him for two days. On release he fled, ultimately to UK. His wife and four children remained in Karachi.
20. The AIT held that both appellants, even if they could not safely return to, respectively, Sargodha or Karachi, could not establish that it would be unsafe or unduly harsh to expect them to relocate within Pakistan. The AIT set out its general analysis of the position of Ahmadis in Pakistan as follows:

“82. The Iftikhar Ahmed decision was published just a few weeks after General Musharraf came to power in Pakistan. The evidence before us, nine years later, indicated that the propagation question would more properly be approached on a case-by-case basis with the risk dependent on the lengths to which an individual Ahmadi carried his da'wa observance. We remind ourselves of the Tribunal's finding in IA and others:

... [the AIT then set out parts of §§26 to 28 of IA and continued ...]

83. On the evidence before us, that analysis remains good. Whilst it is clear that local pressure is exerted to restrict the building of new Ahmadi mosques, schools and cemeteries from time to time, and some Ahmadis are arrested and charged with blasphemy or behaviour which is offensive to Muslims, the numbers recorded are small and have declined since the Musharraf Government took power. Set against the number of Ahmadis in Pakistan as a whole, they are very low indeed.

84. There is very sparse evidence indeed of harm to Ahmadis (though rather more anecdotal evidence of difficulties for Christians). We note the great care exercised by the preaching teams who operate out of private homes, by invitation only and after careful vetting of those to whom they propagate the Ahmadi faith. We remind ourselves of the number of small Ahmadi mosques with established officers and security guards in the towns about which we heard evidence, large and small. We remind ourselves that the first appellant was able to hand out leaflets on his stall openly without harm for many years. We note that the courts do grant bail and that all appeals against blasphemy convictions have succeeded in recent years. We consider that the risk today on return to Pakistan for Ahmadis who propagate the Ahmadi faith falls well below the level necessary to show a real risk of persecution, serious harm or ill-treatment and thus to engage any form of international protection.

85. It may be, as the Tribunal said in IA and others, that in some individual cases the level of risk can be shown to be sufficiently enhanced on the particular facts to indicate that that individual cannot be returned safely to their home area. Whether or not there is an internal relocation option, either to Rabwah or elsewhere in Pakistan, will then be a question of fact in relation to that individual. Rabwah is no safer than elsewhere in Pakistan for Ahmadis, but the question whether it is an appropriate internal relocation option for an individual Ahmadi will always depend on the particular circumstances and facts of that individual's situation.”

21. The AIT then went on to consider the particular position of each appellant. As regards the first appellant, its reasoning was as follows:

“89. Four years later in October 2004, and despite the threats that he then received, the first appellant reopened his shops before leaving Pakistan so that his wife was able to let them and use the rent for her support while living in Rabwah. We take the view that had the mullahs been serious in seeking his death as an apostate they would not have allowed him to leave Sargodha alive or to re-open his shops so that his wife could let them. On the first appellant's own account he did not actually experience any difficulties in Rabwah. He was hardly there long enough; a few days at most. We have no reason to think that if he had stayed longer, there would have been any greater risk, especially in view of the safety in Rabwah of the first appellant's wife and children thereafter.

...

91. *We are not satisfied that the first appellant was ever at risk on account of his proselytising activities, which were carried on privately in the sense in which we have explained above. We conclude that the objective of the Khatme Nabuwat mullahs in Sargodha was limited to stopping the open advertisement of the Ahmadi religion in the first appellant's shop, in which they were successful. The fact that they did not pursue the first appellant and his wife to Rabwah in our view is an indication of their limited and localised adverse interest.*

92. *We cannot exclude the possibility that if the first appellant were to reappear in Sargodha, re-establish his business and continue to advertise the Ahmadi religion he might again attract the adverse interest of the local Khatme Nabuwat mullahs who know him. The evidence before us is not sufficient, however, to establish even to the appropriate lower standard of proof that if the first appellant were to relocate to another part of Pakistan, such as Rabwah or Karachi, he would be at any greater risk than any other devout Ahmadi who was inclined to proselytise. We are not satisfied that the Sargodha Khatme Nabuwat mullahs would become aware that the first appellant had returned or that even if they did they would have any greater adverse interest in him than they appear to have in other Ahmadi officeholders in Sargodha.*

93. *We do not, therefore, consider that it would be unsafe or unduly harsh to expect the first appellant to exercise his internal relocation option within Pakistan if he considers that he remains at risk of harassment or difficulties in Sargodha.”*
(emphasis added)

22. As regards the second appellant, the AIT concluded in the following terms:

“94. *The second appellant's account is credible; there is no issue about that. However, it is not an account of national pursuit by the Khatme Nabuwat; the difficulties he had in Karimabad and Khewra were wholly unconnected with those which he had in Karachi and also with each other. He was not sought out in either place on account of events which had occurred in Karachi.*

....

96. *The difficulties in Karachi, Karimabad and Khewra were distinct and fortuitous, with no relation with each other; that is not evidence to any standard that the second appellant risks further adverse interest shown in him if he returns to Pakistan for any of those reasons.*

97. *The appellant accompanied the Ahmadi mosque President and a preaching team on a trip to Sindh without coming to any harm. He position in cross-examination was that his propagation of the Ahmadi faith was discreet and privately carried out. He would always do it indoors and always to an invited individual or audience, not to people at large. In these circumstances, if the second appellant were unable to return to live in Karachi, we consider that he could relocate to an area of Pakistan where he was not known. In so doing, he would be at no greater risk than any other devout Ahmadi who was inclined to propagate the Ahmadi faith.*

98. *The second appellant's dramatic claim that he could return to Pakistan only if his hands were tied and his eyes and ears covered is an exaggeration. Of course there*

remains a risk that the second appellant's propagation activities might come to the attention of Khatme Nabuwat mullahs but the risk of this happening is so small, given the manner in which the proselytising would be undertaken, that it does not amount to a real risk. As far as safety is concerned, there is no indication that it would be unsafe for him to return to Pakistan now.

99. There remains the question of reasonableness of internal relocation. The second appellant does not want to go back to his home area of Karachi, but his reason is that he would not wish to live with his wife's parents there, as do his wife and children at present. Save for the suggestion that he would have to remain silent about his religion, the second appellant did not put forward any practical difficulties in relocating elsewhere within Pakistan. He has not discharged the burden of showing that it would be unsafe or unduly harsh to expect him to relocate within Pakistan”

(emphasis added)

(3) IA in Court of Appeal

23. The Secretary of State appealed to the Court of Appeal in IA on the basis of fears that the decision of the AIT was “capable of undermining almost every internal relocation answer to an Ahmadi asylum claim” (§1, Court of Appeal judgment). The issue for the Court of Appeal was whether the AIT’s reasoning about the general safety of Ahmadis in Rabwah stood up (§14). After setting out §§18 to 28 of the AIT’s reasoning, the Court of Appeal first of all (at §17) corrected the wording of the AIT’s headnote (set out at paragraph 15 above) such that it should properly read “Rabwah does not necessarily constitute a safe haven for *every* Ahmadi” (rather than for “any” Ahmadi). Secondly, the Court of Appeal addressed the Secretary of State’s further concern about one possible reading of §25 of the AIT’s reasoning, in the following terms:

“19. We accept that, read alone, the passage [in §25] could be so construed. But it has to be read as part of the process of reasoning which culminates in §28, which we have also highlighted. That reasoning, as we understand it, proceeds by the following steps:

(a) It is not necessarily the case that an Ahmadi who reasonably fears persecution elsewhere in Pakistan can safely relocate to Rabwah.

(b) An Ahmadi who does move to Rabwah may not be able to remain there for long; and for those who are able to remain in Rabwah, safety is not assured because local power is not in Ahmadi hands and the KN is at least as active in Rabwah as elsewhere.

(c) But this does not mean that no Ahmadi can be reasonably safe in Rabwah. As in the rest of Pakistan, the incidence of harm to Ahmadis there is not high.

(d) What matters therefore is the particular risk faced by the individual Ahmadi and the reasons for it.

(e) It follows that, for those who can establish a well-founded fear of persecution elsewhere in Pakistan, Rabwah is not to be assumed to be either generically safe or generically unsafe. The issue must be determined case by case.

20. This determination was promulgated on 17 October 2007. Later that year another division of the AIT chaired by SIJ Gleeson, who was a party to the present decision, in MJ and ZM (Ahmadis - risk) (Pakistan) [2008] UKAIT 00033 were able to deal with two further Ahmadi asylum cases on the basis of the present determination without adopting the wide premise anticipated by the Home Secretary. Since Mr Cooray tells us that a renewed application for permission to appeal against the determination may be pending, we limit what we say about the case; but we observe that, having recited the headnote of IA, the AIT directed themselves (§5):

"Questions of internal relocation and undue harshness in relation to Rabwah are therefore questions of fact in relation to the particular circumstances of each appellant."

They went on, loyally to the present decision, to hold (§28) that it was no longer sufficient to find that for an ordinary Ahmadi Rabwah was without more a safe refuge. They therefore looked in detail at the specificity of each case (and, incidentally, at the demography of the Ahmadi faith) and concluded in each case that internal relocation was both safe and not unduly harsh"

Summary of principles

24. In summary, the following principles can be derived from the cases of *IA* and *MJ and ZM*.
- (1) In Pakistan as a whole, the number of incidents recorded against Ahmadis are small, particularly when set against the number of Ahmadis in Pakistan. There is very sparse evidence of harm to Ahmadis from non-state agents. The risk today on return for Ahmadis who propagate the Ahmadi faith falls well below the level necessary to show a real risk of persecution, serious harm or ill-treatment: *MJ and ZM*, §§ 83 and 84.
 - (2) There may exceptionally be a case where the facts indicate that an individual cannot be returned safely to his home area, in which case the question of the existence of an internal relocation option arises: *MJ and ZM* §85 and §4 of the summary.
 - (3) Where a question of internal relocation does arise, the existence of an internal relocation option, either to Rabwah or elsewhere in Pakistan is a question of fact in relation to that individual: *MJ and ZM* §85 and §4 of the summary.
 - (4) Whilst Pakistan as a whole is safe, for an individual who does have a reasonable fear of persecution in one part of Pakistan, Rabwah does not necessarily constitute

a safe haven: *IA (CA)* §§17 and 19(a). For those who can establish a well founded fear of persecution elsewhere in Pakistan, Rabwah is not to be assumed to be either generically safe or generically unsafe. The issue must be determined case by case: *IA (CA)*, §19(e).

- (5) A relevant factor in determining, on the particular facts, whether a particular place of internal relocation is safe is whether there is evidence of "national" or "institutional pursuit" or, rather, whether the past persecution was "localised": *IA (AIT)* §27; *MJ and ZM* §§91, 92 and 94; and *IA (CA)* §2.

The Adjudicator's Determination

25. At paragraph 21 of his Determination (made prior to the recent decisions in *IA* and *MJ and ZM*), the Adjudicator recited the relevant facts, which can be summarised as follows. The Claimant was born in Jaranwala in 1973 and lived there until he was 15. He left Jaranwala as a result of the loss of his family home arising out of a dispute in which his father was involved. There was no specific claim that that loss was as a result of his family being Ahmadi. The family moved to Rabwah. Thereafter from 1989 to 1997 the Claimant lived in Karachi. Until 1997 he lived there without incident. In 1997 he was questioned and beaten by "extremists" for being an Ahmadi. He then moved to Sheikhpura, where, in 1998, he was harassed by other traders in the market because of being Ahmadi. A business rival was a member of the KN. The police arrested and beat the Claimant. Subsequently, on a second occasion, he was badly beaten by the police and he had some money stolen from him. As a result he left Pakistan. The Adjudicator's findings continued in the following terms:

"22. ... In his oral evidence the Appellant implied that his moves from Jaranwala to Rabwah, from there to Karachi and then to Shaikhupura were for the sake of his life. However he gave no evidence of having been persecuted in Rabwah. His move from there to Karachi was for his education and because of work opportunities - in reply to question 9 of the interview he said he moved to Karachi because there were no job opportunities in Rabwah.

...

26. The Appellant's Representative ... made abundant references to objective material to show persecution of Ahmadis in Pakistan and the lack of real protection generally available to them ... in Pakistan... Whilst I consider there is a serious possibility that the events in Jaranwala occurred - essentially directed against his parents than the Appellant who was in his mid-teens when the events occurred. I do not find that those events would lead to a serious likelihood of persecution being directed against the Appellant if he returned there now. ... it is clear that he moved from Rabwah to Karachi to progress his education and to take advantage of work opportunities. It

was not because he was persecuted in Rabwah. ... Given the background evidence I accept that there is a serious possibility that he was attacked in Karachi and did lose his job. It is claimed that he had established a good business in Shaikhupura but there is no evidence to support this and he was not in business there for very long before the further alleged persecution occurred. His evidence is that the members of the Khatame Nabuwat who opposed him were business rivals and used the pretext of his Ahmadi faith to oppose him. This does not suggest that there was any link with the persecution he claims occurred in Karachi. However his story with regard to the persecution and treatment at the hands of the police is consistent and supported by the objective material; there is a serious possibility that it occurred. The physical ill-treatment he claims to have suffered was at the hands of the police rather than the Khatme Nabuwat. It may be that certain police officers abused their position to extort money from him. ...

27. I have ... reached the conclusion that ... the core of his story remains to the extent that there is a serious possibility he was persecuted in Karachi ... because of his Ahmadi faith. I make no finding as to whether or not he was persecuted for a Convention reason in Shaikhupura; he may well have antagonised business rivals although his business there was shortlived. ...

28. The issue is whether he would face persecution if he returned there now. However I accept that returning to live in Karachi where I have found he suffered persecution and possibly to Shaikhupura where he may have been persecuted, might place him in the position where there is a serious possibility that he would be persecuted again for his Ahmadi faith."

29. However ... I do find it credible, taken in the round and applying the lower standard of proof that he did suffer persecution at the hands of religious extremists against whom the state was unwilling or unable to provide protection on the **Horvath** criteria and there is a serious possibility that he would suffer such treatment again if he returned to those parts of Pakistan where Ahmadi are in a minority.

30. However in Rabwah, where 90% of the population are Ahmadi it is a different matter compared with Karachi, Shaikhupura and other places where Ahmadi are very much in the minority. ...

31. However I find it would be safe and not unduly harsh for this Appellant to re-locate to Rabwah. ... I have considered carefully the very detailed expert report of Mr Mansoor, Solicitor, particularly in relation to Rabwah. The question is whether it would be safe and not unduly harsh for this Appellant to re-locate there, not questions of administrative control or broader issues and implications. In the case of this Appellant I follow the conclusions of the Tribunal in **Mirza** ... in finding that notwithstanding the presence in Rabwah of members of the Khatme Nabuwat, protection is available to Ahmadis and it is generally safe for them there. According to the Appellant it was for every Ahmadi to preach their religion. In Rabwah with 90% Ahmadi, any proselytising by him would be less conspicuous with the opportunities limited to the other 10% of the population. In any event, notwithstanding his claims about his father's role and his family's profile, I do not find his evidence credible that in Pakistan he was prominent and conspicuous as a preacher of the Ahmadi faith. In Rabwah it is not a serious possibility that he would be persecuted and without available protection.

32. There was no evidence as to why it would be unduly harsh for him to re-locate in Rabwah. He has family there and there is no reason why he would not be able to establish himself and exploit his obvious business acumen...."

(emphasis added – save for line 4 in para. 31)

26. The Adjudicator then went on to consider the human rights claim and concluded at paragraph 33:

“33.... there are substantial grounds for believing there is a real risk of a breach of Articles 2 or 3 of the Human Rights Convention if the Appellant were returned to Pakistan except that I would not find there to be such a risk if he re-located to Rabwah.” *(emphasis added)*

The Claimant's Further Representations

27. In his Further Representations dated 4 August 2008, the Claimant submitted (at paragraph 8) that, in view of the recent case law and in the light of Adjudicators' findings:

"a. Adjudicator Strowger accepted that he had been subjected to persecution and that he would be at risk in those areas of Pakistan where Ahmadis were in the minority

b. Rabwah is not a safe relocation alternative, simply on the basis of the number of Ahmadis present within the population

c. He is an exceptional Ahmadi, who cannot return safely to his home area and is unable to relocate to Rabwah"

The Decision

28. In the Decision, the Defendant stated that further consideration had been given to the Claimant's case following the order of Walker J and the Further Representations. At paragraph 8, the Defendant referred to the approach required by *WM (DRC)*, to the recent decisions in *IA* (in the AIT and the Court of Appeal) and in *MJ and ZM*, and to the Claimant's arguments at paragraph 8 of the Further Representations. The Decision continued (at paragraph 10) that *"The Adjudicator's findings must be considered in the light of the decision of the AIT in MJ and ZM"* and then set out §§1 to 3 of the headnote of *MJ and ZM* (set out at paragraph 18 above). At paragraph 11, the Defendant referred to, and quoted at length, paragraphs 26 and 33 of the Adjudicator's Determination. At paragraph 12, the Defendant referred to, and quoted at length, §§4, 6 and 30 of the AIT's determination in *IA*, which paragraphs address specifically the risk to Ahmadis from the KN both in Rabwah and elsewhere in Pakistan. The Decision then continued, at paragraph 13:

"It clearly shows that in the determination promulgated in paragraph 26 "However his story with regard to the persecution and treatment at the hands of the police is consistent and supported by the objective material; there is a serious possibility that it occurred. The physical ill-treatment he claims to have suffered was at the hands of the police rather than the Khatme Nabuwat.", your client was found credible of persecution in the hands of the police and NOT from Khatme Nabuwat (KN) as in the case of IA and others ... as referred to in paragraphs 4, 6 and 30. Your claimant's circumstance differs from the case you have related to, therefore this case does not apply to you client."
(emphasis added)

29. After citing §57 of *MJ and ZM* and the Adjudicator's findings (at paragraph 28) of risk on return to Karachi and Sheikhpura, the Decision stated (at paragraph 15) that "*your client has the option to relocate anywhere in Pakistan, apart from Karachi and Sheikhpura which are locations where the Adjudicator found that your client may have suffered persecution.*"
30. Finally in paragraph 16, the Decision addressed the claim (at paragraph 8 c of the Further Representations) that the Claimant is an exceptional Ahmadi and cannot return safely to his home area or to Rabwah, stating: "*Your client was born in Jaranwala where he spent most of his life. He then moved to live in Rabwah*". The Decision then cited paragraph 22 of the Adjudicator's Determination to the effect that there was no evidence of persecution in Rabwah and that he had moved from Rabwah to Karachi for education and job opportunities. Paragraph 16 continued that "*Your client did not state that he had been persecuted in Rabwah he only left Rabwah to move to Karachi because there were no job opportunities in Rabwah*". Then, after citing §4 of the headnote in *MJ and ZM*, (set out in paragraph 18 above) and emphasising the reference there to "exceptionally and "the particular appellant", the Defendant concluded that "*It is not accepted that your client is such an exception that he is at risk in Pakistan as a whole*".
31. On this basis, the Defendant concluded, at paragraph 17 of the Decision, that there was no realistic prospect that the Claimant's submissions would lead an immigration judge to decide that the Claimant should be allowed to stay in the United Kingdom and accordingly did not amount to a fresh claim under paragraph 353.

The Claimant's case for judicial review

32. The Claimant's case in his amended grounds for judicial review, as developed in written and oral argument, puts forward three errors said to have been made by the Defendant in the Decision, as follows:

- (1) At paragraph 13 of the Decision, the Defendant had failed properly to apply the Country Guidance case law, and in particular, failed to apply the case of *IA*.
 - (2) The Defendant's conclusion, at paragraph 15 of the Decision, that the Claimant could relocate to any location other than Karachi or Sheikhpura was irrational and failed anxiously to scrutinize the Adjudicator's Determination, and in particular paragraph 29, where the Adjudicator had found that the Claimant would be at risk in any location other than one where Ahmadis were in the majority.
 - (3) The Defendant's conclusion in relation to Rabwah, at paragraph 16 of the Decision, was based on two points made by the Defendant, namely that the Claimant had never claimed ill-treatment in Rabwah and that the Claimant had failed to demonstrate that his was an exceptional case, rendering him at risk in Rabwah. Those two points are fundamentally flawed, because the Adjudicator's Determination was based upon the now unsound foundation that Rabwah was a location where Ahmadis were in the majority and the Claimant's past ill-treatment in Karachi and Sheikhpura places him in the category of exceptional Ahmadis referred to in §4 of the headnote in *MJ and ZM*.
33. Before turning to consider each of these grounds in turn, I make two general observations at the outset.
34. First, in my judgment, in making her assessment of the prospects before an immigration judge, the Defendant was required to consider the position as it would be before an immigration judge now. The Claimant, in argument, placed heavy reliance upon the findings made in the Adjudicator's Determination, contending that these findings alone comprised the relevant material for the assessment to be made. However, whilst findings of fact specific to this Claimant in the Adjudicator's Determination are, in general, to be accepted, an immigration judge dealing with the matter on fresh appeal would not be able to ignore other, more recent, factual matters of a more general nature, and in particular those, more general, facts as found in the latest Country Guidance cases: see *MacDonald's Immigration Law and Practice* (7th edn) §§18.149 and 18.150. In this regard, the up to date factual position as regards Ahmadis in Pakistan set out in *MJ and ZM* would be highly pertinent to the prospects of success before an immigration judge. The issue for the Defendant under rule 353 is whether there is a realistic prospect of success *now*.
35. Secondly, the heart of the Claimant's case for judicial review is to be found in grounds (2) and (3). In essence, that case is that because, as the Adjudicator found, the Claimant had been the

subject of persecution or ill-treatment in Karachi and in Sheikhpura, he is for that reason to be considered at risk of persecution everywhere in Pakistan, and most particularly on return either to Jaranwala or to Rabwah. This case is addressed below.

(1) Paragraph 13 of the Decision: erroneous application of IA

36. The Claimant contends that the concluding sentence in paragraph 13 of the Decision stating that the case of *IA and others* "does not apply to your client" indicates that the Defendant erroneously ignored that important decision, and that the Defendant failed anxiously to scrutinise the case law and the facts of the Claimant's case. Further the distinction drawn in paragraph 13 between ill-treatment at the hands of the KN, in *IA*, and at the hands of the police, in the Claimant's case, is not well founded, as the Claimant had been subject to ill-treatment by "extremists" in Karachi. As to the Defendant's explanation for paragraph 13 (in the Detailed Grounds of Defence) that the references, in paragraphs 10 and 14 of the Decision, to *MJ and ZM* implicitly contain a reference to, and consideration of the reasoning in, *IA*, the Claimant submits that this is not a proper reading of the Decision; the references to *MJ and ZM* relate only to the available relocation alternatives within other Ahmadi communities and to the lack of overall risk to Ahmadis in Pakistan. As a result, so the Claimant contends, the error in paragraph 13 indicates that the Defendant did not properly consider whether *Rabwah* was safe for *this Claimant*, taking into account the facts of his case, and it is implicit that the Defendant assumed it was safe to return to Rabwah.
37. In my judgment, this ground is not well founded and is not of itself sufficient to establish the Claimant's claim for judicial review.
38. Paragraph 13 of the Decision is certainly not well expressed, either as a matter of grammar, or, on its own, as a matter of reasoning. The principles established by *IA* as regards Rabwah as a place of relocation do not distinguish between ill-treatment at the hands of the KN and ill-treatment at the hands of the police. The Defendant was not justified in saying that *IA* did not apply to the Claimant because of such a distinction. (On the other hand, I do not consider that the finding of ill-treatment by "extremists" in paragraph 21 of the Adjudicator's Determination means that the KN were involved in the Claimant's case.)
39. However, I do not accept that this justifiable criticism of paragraph 13 of the Decision leads to the conclusion that, in the Decision, the Defendant did not sufficiently take into account the *IA* case and, for that reason, did not consider the specific position of risk to *this Claimant* of relocation to *Rabwah*. First, in paragraph 10, the Defendant, addressing the specific issue of

relocation to Rabwah, sets out §1 of the summary in *MJ and ZM*, which in turn summarises the principles to be derived from *IA* relating specifically to *Rabwah*. Secondly, paragraph 16 of the Decision, again addressing this specific issue, refers to §4 of the summary in *MJ and ZM*, which also directs attention to Rabwah, and in so doing necessarily incorporates the reasoning in *IA*. Whether in fact the Defendant's assessment of the Claimant's position in relation to Rabwah was adequate falls for determination under Ground (3) below. For the purposes of this Ground (1), the question is whether the Defendant actually considered the position in Rabwah for this Claimant. In my judgment, the answer to that question is yes; and on that basis Ground (1) does not give rise to a distinct ground for judicial review.

(2) Paragraph 15 of the Decision: the conclusion as to relocation anywhere but Karachi and Sheikhpura was irrational

40. The principal aspect of ground (2) challenges the Defendant's conclusion that the Claimant could safely return to his home area, Jaranwala. The Claimant contends that the finding, in paragraph 29 of the Adjudicator's Determination, that the Claimant would be at risk of persecution "*if he returned to those parts of Pakistan where Ahmadi are in a minority*" was a finding that he could not return safely to Jaranwala, being an area where Ahmadi are in the minority. The specific findings made about Jaranwala in paragraph 26 of the Adjudicator's Determination must be read in the context of this more general finding in paragraph 29. In response, the Defendant's is that the Adjudicator found only that the Claimant was at risk in Karachi and, possibly, Sheikhpura.
41. I accept that the words used in paragraph 29 (read in conjunction with paragraphs 30 and 33) do suggest a finding by the Adjudicator that it was not safe for this Claimant to return to anywhere in Pakistan where Ahmadis are in the minority. Again, as a matter of grammar, it is difficult to read the words "*those parts of Pakistan where Ahmadi are in a minority*" as being "*Karachi and Sheikhpura, in which places Ahmadi are in a minority*". Moreover the words in paragraph 30 ("*Karachi, Shaikhupura and other places where Ahmadi are very much in the minority*") and in paragraph 33 ("*if the Appellant were return to Pakistan except... Rabwah*") seem to me inconsistent with this alternative construction of the words in paragraph 29, as suggested in argument by the Defendant.
42. However, despite these general statements about risk elsewhere in Pakistan (other than Karachi, Sheikhpura and Rabwah), there is no specific *evidence* in the Adjudicator's Determination to support a finding that the Claimant would be unsafe if returned to Jaranwala. Indeed, as the Defendant points out, paragraph 26 of the Adjudicator's

Determination supports the opposite view that the Adjudicator concluded that the Claimant would not be at risk there, where he finds "*I do not find that those events would lead to a serious likelihood of persecution being directed against the Appellant if returned there now*". That, in my judgment, is a finding that, at the time of his Determination, the Adjudicator found that "the events" referred to did not lead to a serious likelihood of persecution in Jaranwala.

43. The Claimant's answer to this is that the words "*those events*" in paragraph 26 are limited to the particular events surrounding the Claimant parents' loss of the family house in Jaranwala; and that they do not take account of the ill-treatment the Claimant himself suffered in Karachi and Sheikhupura *after* he had left Jaranwala but *before* the date of the Determination. It is that later ill-treatment that gave rise to the risk in Jaranwala and in Pakistan in general. The Claimant submits that the finding in paragraph 29 of risk anywhere effectively overrides the finding in paragraph 26 of no risk in Jaranwala. The Adjudicator's Determination must be read as concluding that, whilst the specific events relating to his parents do not do so, *other* events, namely those in Karachi and Sheikhupura, would lead to a serious likelihood of persecution being directed against the Appellant if returned to Jaranwala now.
44. In my judgment, it is not possible to find such a conclusion implicit in paragraphs 26 and 29 of the Adjudicator's Determination. First, if the Adjudicator had intended to make such a finding in relation to Jaranwala, he would have done so in paragraph 26 itself. The words "*if returned there now*" indicate that the Adjudicator was assessing the risk for the Claimant in Jaranwala at the time of his determination and *after* the events in Karachi and Sheikhupura had occurred. Secondly, there is no material in the Adjudicator's Determination or elsewhere to support the link, necessary for the Claimant's case, between the Claimant's ill-treatment in Karachi and Sheikhupura and the prospect of ill-treatment in Jaranwala. As explained in *IA* and in *MJ and ZM* (see paragraph 24(5) above), in some cases the nature of the ill-treatment sustained in one place leads to the risk of ill-treatment in other places - where the profile suggests that there is institutional or national pursuit. But in the present case, there is no such evidence. The ill-treatment in each of Karachi and in Sheikhupura was localised. Indeed at paragraph 26 of the Adjudicator's Determination, there is an express finding that there was no suggestion "that there was any link [between the persecution in Sheikhupura] with the persecution ... in Karachi"; let alone any risk of a link between the persecution in either place and a risk of persecution in Jaranwala.
45. The Defendant submits that paragraph 26 amounts to a clear and express finding that there was no risk of persecution in Jaranwala. I agree. But in any event, even if it were not,

paragraph 26, alone or when read with paragraph 29, does not amount to a finding that the Claimant would be at risk of persecution in Jaranwala.

46. As to the specific point on paragraph 29 of the Adjudicator's Determination (and other parts) where the Adjudicator appears to include *all* places where Ahmadis are in the minority in his findings of risk, in my judgment, these passages have to be read in the context of the position of Ahmadis as understood then and, in the context of the finding *by the Adjudicator* that Rabwah was safe because there Ahmadis were in the majority. In my judgment, the Adjudicator worked from the assumption that, whatever else might be the position, Ahmadis were safe in Rabwah because they were in the majority; by contrast, where Ahmadis were in the minority, they would not be so safe. It is in the context of that contrast and the majority issue in Rabwah that the Adjudicator concluded that this Claimant, although safe in the majority place Rabwah, would not be safe in minority places. In my judgment, the Adjudicator did not specifically address or make findings of specific risk in specific places other than Karachi and Sheikhpura, whether those other places are Jaranwala, Rabwah or anywhere else.
47. For these reasons, I do not accept that the Adjudicator found that the Claimant could not safely return to his home area, Jaranwala. To the extent that it was based on the position in Jaranwala, the Defendant's conclusion, in paragraph 15 of the Decision, that the Claimant had "*the option to relocate anywhere ... apart from Sheikupura*" was not *Wednesbury* unreasonable. To the extent that the conclusion in paragraph 15 was directed to the position in Rabwah, then, for the reasons given below under Ground (3), it was also not unreasonable. Accordingly Ground (2) is not made out.

(3) Paragraph 16 of the Decision: Relocation to Rabwah

48. Finally, the Claimant contends that, in paragraph 16 of the Decision, the Defendant failed adequately to take account of his ill-treatment in Karachi and in Sheikhpura, in reaching her conclusions about the risk of persecution upon relocation to Rabwah. In paragraph 16, the Defendant rejected the Claimant's assertion that he is an "exceptional Ahmadi who is unable to relocate to Rabwah". The Claimant's case is that it is the fact that *this* Claimant did suffer ill-treatment in Karachi and Sheikhpura that gives rise to the risk, for *this* Claimant, of ill-treatment in Rabwah. The fact that he suffered past persecution puts the Claimant into the category of an "exceptional" case upon return to Rabwah. Further, the Claimant contends that, in view of the findings in the Adjudicator's Determination, the burden is on the

Defendant to show why the Claimant would not be at risk in Rabwah and, in the Decision, the Defendant failed to make any finding as to why the Claimant would not be at risk there.

49. In my judgment, this ground does not provide a basis to conclude that the Defendant's assessment in paragraph 16 of the Decision was *Wednesbury* unreasonable.
50. First, in the Decision, the Defendant did consider the position in Rabwah specifically. Paragraph 16 recited the finding, in paragraph 22 of the Adjudicator's Determination, that the Claimant gave no evidence of persecution in Rabwah, and that he had left Rabwah for his education and for work opportunities. The Adjudicator made a clear finding that, whilst in Rabwah, the Claimant had not suffered any ill-treatment. (I accept the Claimant's contention that paragraph 32 of the Adjudicator's Determination addressed the distinct question of whether relocation to Rabwah, even if safe, would be unduly harsh).
51. Secondly, in my judgment, the Adjudicator did not find specifically that the Claimant would have been at risk in Rabwah, but for the fact that Ahmadis were in the majority in Rabwah. The Claimant contends that, were it not for his reliance upon the fact that in Rabwah Ahmadis are in the majority, the Adjudicator would have found (and effectively he did find) that the Claimant would be at risk of persecution in Rabwah. Such a contention contains the fallacy that once the fact that 90% of the population in Rabwah is Ahmadi is disregarded (as it must be following *IA*), it necessarily follows that this Claimant must be at risk on return to Rabwah. This is not a finding that one can make based on the Adjudicator's Determination.
52. Thirdly, the Claimant has advanced no evidence, in the Further Representations or otherwise, that he was at risk of persecution specifically in Rabwah. The statement, at paragraph 8c, that he "is unable to relocate to Rabwah" is a mere assertion without support of any further evidence.
53. Fourthly, the Claimant's case that he is "an exceptional Ahmadi" is based upon his ill-treatment in the past. The basis, and only basis, upon which the Claimant contends that it would be unsafe for him to return to *Rabwah* is the ill-treatment that he had suffered in Karachi and Sheikhupura after he had left Rabwah. But there is no finding, nor any evidence to give rise to a prospect of establishing, that the ill-treatment in Karachi or Sheikhupura was such that he would be at risk upon return to Rabwah. Just as in the case of Jaranwala (see paragraph 44 above), there is no evidence to suggest that the past ill-treatment of the Claimant was institutional or that he would be at risk of "national pursuit" from one place to another, or that the past ill-treatment was anything other than "localised".

54. Fifthly, as regards the Claimant's suggestion that the burden was on the Defendant to show that the Claimant was not at risk of persecution upon return to Rabwah, the premise for this argument was the contention that the Adjudicator's Determination had found as a fact that he was at risk on return to Rabwah. However, since I do not accept the premise, then the burden of proof remains, as is the norm, upon the Claimant to adduce evidence of risk of persecution or ill-treatment upon relocation, and if not, unreasonableness to relocate: see *Aziz v. SSHD* [2003] EWCA Civ 118 at §§ 15-20, 25, 28.
55. Finally, although of course every case falls to be considered on its own facts, it is instructive to consider the facts pertaining to the two appellants in *MJ and ZM*. In both cases, the appellants had sustained past ill-treatment, but in both cases, this was not, of itself, sufficient to establish a risk of persecution elsewhere in Pakistan, absent any evidence of national pursuit: see §§92 and 93 (first appellant) and §§94, 96 and 97 (second appellant).

Conclusions

56. In my judgment, the Defendant applied the relevant principles to be derived from *IA* and from *MJ and ZM* and there is no basis upon which it can be said that the Defendant's application of those principles to the particular facts of the Claimant's case was irrational.
57. For these reasons, I conclude that it was open to a reasonable Secretary of State, properly applying *IA* and *MJ and ZM*, and addressing matters with the requisite anxious scrutiny, to have concluded that there was no realistic prospect of the Claimant establishing before an immigration judge that there is a real risk of persecution and/or ill-treatment upon his return to Pakistan. The Defendant's decision that the Claimant's further representations did not amount to a fresh claim under paragraph 353 of the Immigration Rules was therefore not unreasonable. Accordingly I dismiss the Claimant's application for judicial review.
58. I propose dealing with matters consequential upon this judgment, including costs, immediately following the handing down of this judgment, unless any party requests that they be dealt with subsequently and, in which event, I will give further directions as to the procedure to be followed, including for the service of written submissions.
59. In the meantime I am grateful to both Mr. Lemer and Mr. Singh for the assistance they have provided to the Court.

